



EAST CENTRAL
BOARD OF COOPERATIVE EDUCATIONAL SERVICES

Joining forces to enrich
educational opportunities for Colorado

820 2nd Street
P.O. Box 910
Limon, Colorado 80828
719-775-2342
Fax 719-775-9714

Agate School Dist.
Agate, CO 80101
(719) 764-2741

Arickaree School Dist.
Anton, CO
(970) 383-2202

Arriba-Flagler School Dist.
Flagler, CO
(719) 765-4684

Bennett School Dist.
Bennett, CO
(303) 644-3234

Bethune School Dist.
Bethune, CO
(719) 346-7513

Burlington School Dist.
Burlington, CO
(719) 346-8737

Byers School Dist.
Byers, CO
(303) 822-5292

Cheyenne Wells School Dist.
Cheyenne Wells, CO
(719) 767-5866

Deer Trail School Dist.
Deer Trail, CO
(303) 769-4421

Elizabeth School Dist.
Elizabeth, CO
(303) 646-1836

Genoa-Hugo School Dist.
Hugo, CO
(719) 743-2428

Hi-Plains School Dist.
Vona, CO
(970) 664-2616 (H.S.)
(970) 664-2636 (Elem.)

Idalia School Dist.
Idalia, CO
(970) 354-7298

Karval School Dist.
Karval, CO
(719) 446-5311

Kiowa School Dist.
Kiowa, CO
(303) 621-2220

Kit Carson School Dist.
Kit Carson, CO
(719) 962-3219

Liberty School Dist.
Joes, CO
(970) 358-4288

Limon School Dist.
Limon, CO
(719) 775-2351

Strasburg School Dist.
Strasburg, CO
(303) 622-9211

Stratton School Dist.
Stratton, CO
(719) 348-5369 (H.S.)
(719) 348-5521 (Elem.)

Woodlin School Dist.
Woodrow, CO
(970) 386-2223

December 17, 2010

VIA ELECTRONIC DELIVERY

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

APPEAL OF UNIVERSAL SERVICE
ADMINISTRATIVE COMPANY DECISIONS

CC Docket Number: 02-6
Billed Entity: East Central BOCES
Billed Entity Number: 142296
FCC Appeal Confirmation Number: 2010121655229

Dear Ms. Dortch and FCC Commission:

This letter is in reference to and supplements the above-referenced East Central BOCES ("ECBOCES") appeal of the USAC decision to withhold E-rate funding for the 2009-2010 and 2010-2011 years and to request funding to be returned for previous years. A schedule of the affected Form 471s and FRNs is set forth in the heading of our Request for Review, filed December 1, 2010.

Because the USAC denials and rescissions being appealed were not specific as to the factual or legal grounds, our appeal was filed in a format to address each point of concern raised by Ms. Gaurangi Shah, USAC, Schools and Libraries Division, in her inquiry dated June 4, 2010. After addressing each bulleted issue or allegation specifically, we felt that there is other overarching information we believe would be helpful in order to get a clear contextual picture of our case. This letter, amending and supplementing our appeal, is intended to assist in clarifying those issues.

Clarification on chronology of allegations in context with the corresponding Form 470, 471 and FRNs.

On January 19, 2006, the ECBOCES posted Form 470 #788110000581938 for services for a WAN. This was to provide distance learning, professional development and educational and telemedicine meetings to 17 school districts located in the eastern and central plains of Colorado, which system we identified as Video Networking for Education and Training System ("VNET" or "VNETS").

On February 16, 2006, ECBOCES signed a multi-year contract for services with Trillion (SPIN: 143025872), and filed Form 471 #520538 indicating this selection, which resulted in E-rate dollars being received in the amount of \$570,733.13 in 2006-2007. For 2007-2008, ECBOCES filed Form 471 #552505 resulting in \$677,580.00 received from E-rate, and again for 2008-2009, ECBOCES filed a renewal Form 471 #597974 resulting in \$697,220.00 of E-rate money being received.

In 2009-2010, the Form 471 #653350 resulting in \$677,580.06 was withheld and in 2010-2011, the Form 471 #728350 resulting in \$716,860.06 was withheld. All of the Form 471 numbers listed in the preceding two paragraphs refer to the original Form 470 filed on January 19, 2006, and Form 471 certified on February 16, 2006.

Ms. Shah and USAC alleged that the open and fair bidding was violated by ECBOCES causing a total of \$1,409,944.92 to be withheld and another \$1,960,073.85 that USAC seeks to recover, for a total of \$3,370,018.77 affected by its decision. (Note that these three numbers include the total E-rate dollars denied by USAC, including the Centrex Form 471 numbers from a later E-rate cycle. The Centrex allegations are explained in this letter separately below, so were not included in the VNET Form 470 figures in the preceding two paragraphs.)

The alleged violations that preceded the very first Form 470, posted on January 19, 2006, are: a lunch valued at \$8.61 provided by Trillion to an ECBOCES employee on October 15, 2004; a breakfast valued at \$9.97 on July 27, 2005, provided by Trillion to an ECBOCES employee; and finally on November 20, 2005, an ECBOCES employee allegedly received a \$50 gift card to a local restaurant.

First, it is important to look at each allegation, then the overall bidding process for the original Form 470 posted in January 2006.

The \$8.61 meal on October 15, 2004, was one year and four months prior to the posting of the January 2006 Form 470 and resulting bidding process. During that time period, the previous ECBOCES Director, Dr. David Van Sant, moved to a new position and Mr. Floyd Beard became the new Executive Director on July 1, 2005. Neither has any recollection of such a meal, nor does any staff member that was employed by the ECBOCES at the time.

During the fall of 2005, ECBOCES administration made arrangements for Dale Kanack to work for the ECBOCES part-time to assist the E-rate process. Also, Jarred Masterson, who

was later hired as the ECBOCES Director of Technology on July 1, 2006, with part of his assigned duties being to assist with the E-rate process, was not an employee of ECBOCES at this time.

The \$8.61 meal (if indeed it was associated with the ECBOCES) was not offered to or consumed by anyone at the ECBOCES who was connected to the E-rate process or Form 471 selection process when the January 2006 Form 470 was posted, when the bid evaluation was conducted, or when the February Form 471 was submitted and certified, as none of the ECBOCES employees who were part of that process were employees at ECBOCES until between eight months to well over a year later. This lunch clearly did not taint the open and fair competitive bidding process.

Secondly, the \$8.61 lunch, even though provided in 2004, is clearly within the applicable local or state requirements which is what the USAC website clearly stated that we had to adhere to in 2006 when this Form 470 and Form 471 process was happening.¹

The second meal in question was on July 27, 2005. As stated previously, Floyd Beard was hired as the new ECBOCES Executive Director on July 1, 2005. Mr. Beard did not meet with Trillion during this time period and no one else who was eventually involved with the E-rate process that led to the posting of the Form 470 was employed by the ECBOCES at this time.

Significantly, at this time in 2005, this meal for \$9.97 also was well within the state gifting guidelines and was not consumed by anyone at ECBOCES who was involved in the E-rate process and the Form 471 selection process in 2006. Therefore, again, this allegation clearly could not have tainted the open and fair bidding process in January and February 2006.

The third allegation is a \$50.00 gift card to a local restaurant supposedly given to an ECBOCES employee on November 20, 2005.

No one involved in the E-Rate bidding process for ECBOCES, before or after this date, has knowledge of this alleged gift card (nor, for that matter, have any other ECBOCES staff). As the Executive Director during the January and February Form 470 and the Form 471 selection process, I asked all ECBOCES office staff to review any calendar engagements they may have had and to recall anything about this gift card and no one at ECBOCES has any knowledge of this card. We work and live in a small rural community and the local restaurants do not offer gift cards, as a rule. Assuming the gift card was to a chain restaurant, the nearest chain restaurant is 80 miles away.

We do not believe this gift card was ever received or used by any ECBOCES employee and we even more firmly believe it was not received or issued to anyone connected to the ECBOCES E-rate process. Mr. Beard was the only employee with this specific duty at

¹ See Request for Review, dated December 1, 2010, pp. 6 and 11. See also Exhibit 3 to Request for Review, pages 4 and 5, indicating that all items are in compliance with state law.

ECBOCES at this time, and he has no knowledge of this gift card ever being received at the ECBOCES. Given the questions regarding the accuracy of some of the other expenses attributed by Trillion to ECBOCES, it is also possible that this gift card was inaccurately attributed to ECBOCES in the Trillion expense database.

Further, we checked with Dr. David Van Sant, former Executive Director of the ECBOCES, thinking perhaps he might have or he might know of someone who received this gift card. He did not have any knowledge of this card. *See Attachment A*, which is a letter from the former ECBOCES Executive Director, Dr. David Van Sant, stating this fact.

Again, this gift card, if it ever did come to the ECBOCES prior to Thanksgiving Day in 2005, and then if it was ever used by any ECBOCES employee, did not taint the January – February 2006 E-rate open and fair competitive bidding process. None of the staff involved in that process received or were even aware of the gift card's existence.

In summary, the allegations that Trillion provided a lunch in October of 2004 for \$8.61, a breakfast in July of 2005 for \$9.97, and a gift card for \$50.00 shown as an expense in Trillion's expenditures but unknown to anyone at ECBOCES may well be misattributions on the part of Trillion. Regardless, such gifts would have been acceptable under both state guidelines and the rules the Commission had in place at the time and did not influence anyone at the ECBOCES who was involved with the bid reviews and Form 471 selection process during January and February of 2006.

Clarification of the actual review and selection process for the 2006 Form 471.

As for the actual review and selection during the period when the Form 470 #788110000581938 was posted, the ECBOCES did receive three inquiries to provide these requested services. In addition to the bid from Trillion, Gaggle responded wanting to provide e-mail services only. This was not the comprehensive scope of services, to include a full distance learning system connecting the ECBOCES member school districts, that ECBOCES needed. Conterra Ultra Broadband responded with a sales pitch. ECBOCES Executive Director, Floyd Beard, did respond to Conterra Ultra Broadband, providing the names and location of the sites needing services to connect and other information as was available to all other vendor inquiries. Unfortunately, no further response was ever received from Conterra Ultra Broadband.

The ECBOCES did use a rubric to score the bids and select a vendor for services requested in the Form 470. Gaggle scored poorly on this rubric, as it did not provide what ECBOCES was asking for in services. Conterra Ultra Broadband scored second with its "sales pitch," which we added into the rubric. Even though it was not a complete bid, it at least gave us something to compare. The information from Conterra Ultra Broadband did not score well with much of the needed information missing and therefore scored as an incomplete application. Trillion scored highest on the rubric with the only actual completed bid and was selected based on the information it provided and how well it fit the needs of the ECBOCES to service the project as desired. Trillion was selected and the Form 471 was signed in February. It is also significant to note that this was all revealed to USAC in a thorough 2006 Selective Review

certified to USAC by Mr. Beard on May 26, 2006. Through this extensive review, USAC approved this as a fair and open bidding process and E-rate dollars were awarded and committed for the ECBOCES' VNET.

As Executive Director of the ECBOCES during the 2006 time period, I, Floyd Beard, personally confirm that none of the allegations tainted the February 2006 Form 471 selection process.

Clarification on the 470 and 471 process of 2007-2008 - Centrex.

On December 22, 2006, a Form 470 #383320000607969 requesting Centrex phone services, was posted specifically requesting service for 4 sites, 20 phones and 53 employees. On February 7, 2007, a Form 471 #550941 was certified indicating that a contract had been signed with Trillion to provide these services which resulted in \$6,900.69 E-rate dollars being committed for ECBOCES Centrex. In 2008, Form 471 #597967 for \$7,640.03 E-rate dollars was being committed for ECBOCES Centrex. In 2009, Form 471 #653357 for \$7,527.69 E-rate dollars was not funded. In 2010, Form 471 #728369 for \$7,977.11 was not funded. The E-rate dollars not funded total \$15,504.80, and the dollars that USAC wants to recover total \$15,280.08 for a grand total of \$30,784.88 that are in question due to allegations against the open and fair bidding process of the original Form 471 selection in February of 2007.

The first clarification needed is that Ms. Shah and USAC have lumped both the 2006 Form 471 for VNET and the 2007 Form 471 for Centrex all together and use allegations both before and after both years against each individual Form 471 vendor selection process. These were two completely separate competitive processes and should be considered as such. Both were open, fair, and competitive.

The Form 471 process for 2007 is further distinguished by the fact that ECBOCES was an existing customer of Trillion at that time and was receiving services under an ongoing E-rate approved contract. Therefore, due to the pre-existing relationship, there were necessarily and understandably additional contacts with Trillion that USAC construes into allegations of impropriety. We do not believe the allegations have merit. However, these allegations very clearly are claimed to have happened after the 2006 471 VNET bidding and selection process had long since closed and should not retroactively be applied to an earlier and totally different E-rate cycle, process and project.

To give context, ECBOCES had an antiquated PBX and phone system in 2005. In 2005, the ECBOCES had a NorStar phone system and PBX that were old enough that we were informed that when our current maintenance agreement expired we would not be able to renew. As the new Executive Director, Floyd Beard explored phone system options and high-level costs to replace this phone system. Phone systems were being explored by ECBOCES as early as March of 2005 with the companies of Nortel, Nextira, and Black Box. Nextira was the current holder of our NorStar maintenance contract. Importantly, ECBOCES was researching both the possibility of owning its own system, as it had in the past, or seeking a hosted system (such as a Centrex system offered by a local phone company).

The posted Form 470 requested phone services for four sites. The sites are: #1) the ECBOCES Main Offices in Limon, #2) connection to the East Area Center in Burlington, #3) connection to the West Area Center in Byers, and #4) connection to the Eastern Colorado Education Center ("ECEC"), which is the Day Treatment Alternative School four miles south of Limon. The ECBOCES operates and supervises these four sites.

The Form 470 requested phone services for 20 phones. This is the number of phones we had connected on the old PBX and phone system.

And the Form 470 requested phone services for 53 employees. That was the number of employees we had at the ECBOCES in 2006 and we needed a system that would provide mailboxes and voice mail capabilities to serve at least this many employees.

Questions arise from Ms. Shah and USAC as to how Trillion might have knowledge, prior to the January 2007 Form 470 posting, that ECBOCES might be in the market for a new phone system or phone services. Trillion employees and representatives were in the ECBOCES' office installing equipment and correcting issues related to the earlier 2006 VNET Form 471. For representatives of a company that provides those types of services, it must have been obvious that our phone system was antiquated and needed replacement.

Also to answer this question, it is significant to recall that by December of 2005, the ECBOCES had been researching available options to replace its old phone system and specifically had pared these options down and was exploring two specific options for the phone system replacement. One option was the outright purchase of a new PBX. This option was explored and ECBOCES developed and distributed an RFP on December 16, 2006. This RFP was to purchase a phone system. We knew this was not a Priority 1 E-rate service and, since the ECBOCES discount is relatively low, would not be funded under the E-rate program, but it had some potential appeal because we would own and have equity in our own systems' equipment. As a result, although we did not post a Form 470 for this option, we did request bids from vendors to determine the cost-effectiveness of such an approach.

The second option was a hosted system. Since this service was eligible for E-rate, we decided to post a Form 470 requesting this service which we did on December 22, 2006. While these services would not build equity, they also would not require the up-front cost of a purchase, and the cost was eligible for Priority 1 E-rate discounts. The RFP, outside the E-rate process, generated one bid from Shared Technologies. The December 2006 Form 470 posting for phone services generated one bid and that was from Trillion.

Since we only had one bid generated from each option, we compared them against each other. To offset the up-front cost of the purchase solution and create a fair comparison, we extended both costs out over a 10-year period. We ultimately selected the hosted option offered by Trillion, and chose to sign a five-year service agreement which was less expensive and avoided the high capital outlay needed to exercise the purchase option.

It is significant to remember that during the time preceding the posting of this Form 470, we were receiving services from Trillion under our existing E-rate approved contract. The Trillion sales representatives were aware of the RFP which had been released outside the E-rate process and e-mailed the ECBOCES Technology Director with information contained on the USAC website. The employees of ECBOCES already knew this information and so proceeded with our planned Form 470 posting and ignored the e-mail. We had no control over when or to whom the Trillion sales representative e-mailed, but it did not influence the ECBOCES plan to explore both options. Nor did this e-mail influence the process ECBOCES used to evaluate and select the option to be finally chosen. Nor did it influence the selection of the service provider which submitted the only bid to service our posted Form 470 which was developed and executed solely by the employees of ECBOCES.

The December 11, 2006 lunch.

During the 2006 year, Ms. Shah and USAC cited a business lunch on December 11, 2006 for a value of \$8.27. This is long after the date of our initial E-rate approved contract and we were, therefore, an existing customer with Trillion at the time. This meeting was with an Arizona contingent of visitors who toured our VNET system. (See Attachment B.) The person who ate the \$8.27 meal was Ms. Emma Richardson, Distance Learning Coordinator for ECBOCES. Ms. Richardson has nothing to do with the ECBOCES E-rate process, and had not been involved in any way with the bid process associated with the wide area network service which was being discussed and which had been contracted for almost a year at that point.

The VTEC Conference in July of 2006.

Ms. Shah and USAC allege the VTEC conference of July 26-28, 2006, tainted the open and fair competitive bidding process. First, this was nearly six months after the Form 471 was signed in February of 2006 for the VNET and did not affect that bidding process. Secondly, the staff person who attended the conference on behalf of ECBOCES, Mr. Jarred Masterson, had only been employed by ECBOCES as the Director of Technology since July 1, 2006, nearly five months after the vendor selection process in question had been completed.

Mr. Masterson's primary job assignment was to learn everything about the VNET WAN on both sides of the Trillion demark point in the local districts and ECBOCES office. To assist Mr. Masterson to accomplish this, the ECBOCES sent him to a two-day Polycom Training in California, as well as a five-day training in the Denver metro area ensuring his ability to assist with any problem on the classroom side of the demark point. For the connection on the WAN side of the demark point, Mr. Masterson attended the VTEC conference in Austin. At this conference, Mr. Masterson participated in panel discussions, presented on and about the ECBOCES VNET WAN and topics such as its uses, curriculum, guidelines, and future visions to other VTEC conference attendees. Trillion picked up the cost of room and meals for his attendance and all attendees benefitted from his participation.

This was very beneficial to the ECBOCES VNET WAN as Mr. Masterson also gained insights from other attendees about different Distance Learning systems, configurations,

curriculum, teaching methods, and other issues. Mr. Masterson also gained and exchanged professional contact information and how to deal with technical issues. This is knowledge and sharing to help all participants attending in making their systems more successful.

Additional Clarification on the Gift Cards.

Starbucks Gift Cards. The other allegation that Ms. Shah and USAC point out are 10 Starbucks gift cards at a value of \$10.00 each given to the ECBOCES on July 31, 2006, and 2 Target gift cards given to the ECBOCES on December 18, 2006.

The Starbucks cards were received at the ECBOCES but were not used by ECBOCES staff. This was a prime example of how a company's representatives who live in an urban area often do not understand rural communities or lifestyles. In 2006, the nearest Starbucks was over one and a half hours away by car. The \$10 amount per person did not violate state law, but the cards were of virtually no value to the ECBOCES due to the fact that there was no available store where they could be redeemed. As far as is known, they were disposed of after a time of lying around. The ECBOCES staff completing the E-rate process and Form 471 review and selection seven months later did not use these cards nor was the open and fair competitive bidding process affected by these cards at all.

Target Gift Cards. The two Target gift cards with a value of \$25.00 each were shown on the Trillion expenditure sheet as purchased on December 18, 2006. The expenditure sheet also shows that a bulk purchase of \$325.00 worth of cards was purchased with two being intended for ECBOCES.

The East Central BOCES did receive one of these cards, but it was never redeemed and was returned to Trillion. (*See Request for Review*, dated December 1, 2010, Exhibit 5.) There is no record or knowledge of a second Target gift card.

Mr. Beard, Executive Director at the ECBOCES, did use the tracking number from the back of the known card in a contact with Target personnel. The Target staff person was able to track the card and determine when it was purchased and where it was purchased. He also determined that it was never redeemed, which, of course, we knew as we still had the card. Mr. Beard had them search sequentially the previous card number and the next card number. Both searches revealed that the sequential numbers to the known card were not valid Target gift card numbers. At that point, further attempts at searching for the card through Target gift card records was abandoned by ECBOCES, although Trillion may be able to assist the FCC or USAC further in this regard.

Mr. Beard did seek out and make contact with the Trillion Sales Representative who sent the Target gift cards, Mr. Gary Gaessler. Mr. Gaessler did confirm that he remembered sending gift cards to a number of current customers in Christmas cards during the 2006 holiday season.

While the timing in conjunction to the posting of the ECBOCES Form 470 in December of 2006 for the phone services may appear to raise questions, these Christmas cards sent to

customers at that time was totally coincidental and is evidence to show that Trillion really had no idea that the ECBOCES was planning to post that 470.

In brief, the cards were sent simply as a common holiday gesture. The card received by ECBOCES was not cashed but instead was returned to Trillion. This indicates clearly that the Target gift cards did not taint the open and fair competitive bidding process nor did it unfairly influence the January and February Form 471 review and selection process for ECBOCES phone services.

Clarification regarding Gift Rules.

As the Commission's recent release² makes clear, the newly approved rules on gifts, which were released this fall, do not go into effect until January 3, 2011. Keeping this in mind, we believe that the Commission will agree that, under the rules and guidance available at the time, there is no reasonable standard under which ECBOCES violated the competitive bidding rules, as alleged by USAC.

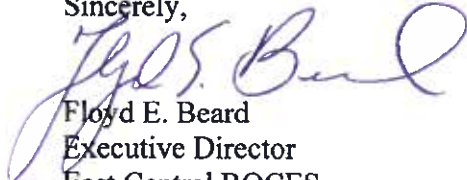
Summary

We hope this addendum helps in clarifying the overall context of what was happening at ECBOCES during the time periods in question, and when it is all put back into context, shows that the allegations brought forth by Ms. Shah and USAC are unfounded. ECBOCES has always strived to adhere to all the rules and regulations involved in the E-rate process.

I urge the FCC to review and overturn the decision by USAC to deny E-rate funding to ECBOCES and to ask for money from previous E-Rate years to be returned.

This is an extremely important issue to school districts and students all across the East Central plains of Colorado.

Sincerely,



Floyd E. Beard
Executive Director
East Central BOCES
820 Second Street, P.O. Box 910
Limon, CO 80828
Telephone: (719) 775-2342 ext. 116
Fax: (719) 775-9714
floydeb@ecboces.org

² See DA 10-2356, released 12/15/2010, at page 2, indicating that the new competitive bidding rules on gifts do not go into effect until 1/3/2011.

Dale Kanack
E-rate Program Coordinator
East Central BOCES

Richard E. Bump
Caplan and Earnest LLC
1800 Broadway, Suite 200
Boulder, CO 80302-5289
Telephone: (303) 443-8010
Fax: (303) 440-3967
rbump@celaw.com

Attachments:

- A Letter, dated December 16, 2010, from Dr. David Van Sant
- B E-mail, dated December 11, 2006, from Floyd Beard to Emma Richardson

825 Cherokee St

Strasburg, Colorado 80136

December 16, 2010

Dear Sirs,

In September 2005, I was Superintendent of Strasburg Schools. I have no recollection of anyone receiving a gift card in any amount from Trillion. If you have any additional questions, please feel free to call or contact me.

Respectfully,

A handwritten signature in black ink that reads "David Van Sant". The signature is written in a cursive, flowing style.

Dr. David Van Sant PhD

From: Floyd Beard <floyd@ecboces.org>
Subject: FW: Pinal County ITV consortium visit confirmation Mon 12/11/06 around 11am your office
Date: December 11, 2006 8:39:31 AM MST
To: "Emma Richardson [External]" <emma@highplainsrealty.net>, Jarred Masterson <jarredm@ecboces.org>

Just a reminder that the Arizona people and Trillion will be here later today, about 11:00 a.m. They will want to view some classes is possible and to look at the guidelines we have in place. Emma, could you have about 5 copies of our guidelines? Thanks

Floyd E. Beard, Executive Director
East Central BOCES
P.O. Box 910, 820 Second Street
Limon Colorado 80828
719-775-2342 ext.-116
fax -719-775-9714
floyd@ecboces.org

From: Gary Gaessler [mailto:gary.gaessler@trillion.net]
Sent: Sunday, December 10, 2006 8:50 PM
To: Floyd Beard
Subject: Pinal County ITV consortium visit confirmation Mon 12/11/06 around 11am your office

Hi Floyd:

Their flite arrives at DIA at 9:45. We will see you around 11am at your office. I will call you if their flite is delayed.

Thanks,

Gary Gaessler
Regional Sales Manager
Trillion
www.trillion.net
720.519.0030 Office
303.570.0003 Mobile
208-474-5706 eFax
gary.gaessler@trillion.net

Our Values:

- ▲ Integrity & Ethics
- ▲ Professionalism & Respect
- ▲ Customer Driven
- ▲ Having Fun!